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Supreme Court of the United States

OCTOBER TERM, 1961

NO. 468

In the Matter of the Application of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners,

—against—

WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents,

directing them to discontinue a certain school practice,

—and—

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSE-MARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MacFARLANE,

Intervenors-Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

OBJECTIONS OF RESPONDENTS AND INTERVENORS-RESPONDENTS TO MOTION BY THE SYNAGOGUE COUNCIL OF AMERICA AND NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL FOR LEAVE TO FILE A BRIEF *AMICI CURIAE*

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Dated: New York, New York
February 16, 1962

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This litigation involves the validity under the First and Fourteenth Amendments to the United States Constitution of the "Regents' Prayer", a voluntary nondenominational prayer composed and recommended by the Board of Regents of the University of the State of New York and adopted for use in the public schools of Union Free School District No. 9, New Hyde Park, New York, pursuant to resolution adopted by respondent School Board on July 8, 1958. Each of the parties hereto has a direct and immediate interest in the outcome of the case and in the constitutional status of the Regents' Prayer. Petitioners, two of whom are of the Jewish faith, are taxpayers of the School District and the parents of children actually attending the public schools of the District (R. 11-12, 54).* Each of the intervenors-respondents is and, throughout the course of this litigation has been, a taxpayer of the district and a parent of children actually attending the schools of the district (R. 54). They are the parents of thirty-seven children attending the various schools of the district and these intervenors-respondents include members of the Hebrew, Protestant and Catholic faiths, and one (Evelyn Koster) who is a member of no organized church. Respondent School Board has an obvious interest in this litigation which will affect practices approved by it for non-compulsory use in its schools. The Board of Regents

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* Except as otherwise identified, references are to pages of the Record on Appeal submitted to this Court by petitioners in support of their petition for writ of certiorari.

of the University of the State of New York has participated as *amicus curiae* throughout the litigation in the courts of New York, and has moved for leave to file a brief *amicus curiae* in this Court, because of its obviously direct interest in sustaining the constitutional validity of the Prayer, composed and recommended by it.

Respondents and intervenors-respondents presently oppose the application of the Synagogue Council of America and the National Community Relations Advisory Council for leave to file a brief *amici curiae* in this Court. It is clear from the moving papers that these organizations have no direct interest in this litigation. They do not base their request for participation on the ground that they represent taxpayers within the School District or that they represent any parents of children actually attending the schools of the District. Neither do they demonstrate that they are actively interested in any pending cases involving analogous issues, the outcome of which may be directly or immediately influenced by this Court's determination of the validity of the Regents' Prayer. The arguments which the moving organizations hope to present are the allegedly sectarian nature of the Prayer and the claim of inherent psychological coercion (Motion, pp. 4-5). These arguments have been thoroughly presented in the New York courts by counsel for petitioners and it is highly probable that such contentions will be reiterated in this Court. No claim is or can be made that counsel for petitioners are not fully competent in all respects to present these and other arguments to this Court.

In short, the moving organizations seek to participate because of a general interest in the judicial construction of the First Amendment. It is submitted that this general

interest is not a sufficient basis for permitting such participation especially where there are many other organizations representing diverse civic, educational or religious groups which may seek or have sought on the basis of a similar general interest, to file *amicus curiae* briefs either in support of or in opposition to the Prayer. It should be emphasized that counsel for respondents and for intervenors-respondents do not confine their opposition to the present motion. Since the granting of the petition for certiorari in this case, they have refused requests by a number of organizations, some favoring the Prayer and others opposed to it, seeking to participate as *amici curiae*.

It is our position that the orderly presentation of this case requires that participation be limited to parties having a direct interest in the constitutional status of the Regents' Prayer or having a right to file *amici curiae* briefs under the Rules of this Court. The Synagogue Council of America and the National Community Relations Advisory Council have neither a direct interest in this litigation nor a right to participate under the Rules of this Court and it is therefore submitted that they should not be permitted to participate as *amici curiae*.

It is therefore respectfully submitted that, under these circumstances, the wholesale filing of *amici* briefs by private organizations claiming some indirect interest in the litigation can serve no useful purpose and can lead only to unnecessary complications. For that reason it is respectfully submitted that the present motion by the Synagogue Council of America and the National Community Relations Advisory Council for leave to file a brief *amici curiae* should be denied.

Dated: New York, New York
February 16, 1962

Respectfully submitted,

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